

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY ZAPPIN,

Plaintiff,

– against –

MATTHEW F. COOPER, *et al.*,

Defendants.

ORDER

20 Civ. 2669 (ER)

Ramos, D.J.:

The Court is in receipt of Mr. Zappin’s objections to the Court’s September 29, 2021 order (the “September 29 Order”). *See* Docs. 108, 109.

Regarding Mr. Zappin’s argument that the Court improperly disregarded his abuse of process arguments, the Court clarifies that it will still consider Mr. Zappin’s arguments on this point in its analysis of his motion for leave to file a Second Amended Complaint. The Court’s September 29 Order merely specified the order in which these arguments will be considered. That is, Mr. Zappin’s arguments will be considered in the Court’s determination of his motion for leave to file a second amended complaint, rather than through a motion to reconsider the dismissal of the first amended complaint. This is consistent with the Court’s instructions in the July 30, 2021 conference that Mr. Zappin will still have an opportunity to have these arguments considered on their merits.¹ *See* Doc. 99 (Transcript of July 30, 2021 hearing), at 8:21–9:2 (“So Mr. Zappin, you will have every opportunity to address the points that you just made in connection with your proposed second amended complaint. If you are correct on the law, then

¹ In other words, the September 29 Order clarified that the Court will not reconsider the dismissal of the First Amended Complaint, but it did nothing to prevent the Court from considering the same arguments in support of his motion to file a Second Amended Complaint.

your second amended complaint will go forward. If you are incorrect on the law, then it would be futile in any event. So you have every opportunity to make your arguments in connection with the pending motion.”).

However, the Court vacates its September 29 Order to the extent it denied Mr. Zappin pre-answer discovery on the basis that the request was improperly made. The Court finds that doing so was inconsistent with its representation in the July 30, 2021 conference that Mr. Zappin was permitted to include “arguments . . . about pre-answer discovery.” *Id.* at 10:20–21. Rather than denying his request at this time, the Court will consider Mr. Zappin’s pre-answer discovery request in its determination on his motion for leave to file a second amended complaint.

It is SO ORDERED.

Dated: October 1, 2021
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is positioned above a horizontal line.

EDGARDO RAMOS, U.S.D.J.